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Order 2004-9-4



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the day of 3rd day of September, 2004

Served: September 3, 2004

**2004 Cargo Designation and 2004/2005
All-Cargo Frequencies (U.S.-China)**

Docket OST-2004-18468 - 133

ORDER TO SHOW CAUSE

Summary

By this order, we tentatively select Polar Air Cargo, Inc. (Polar) to serve the U.S.-China all-cargo market and allocate to it nine weekly frequencies (six in 2004 and three in 2005) for its proposed services. We have also tentatively decided to allocate twelve weekly frequencies (six in 2004 and six in 2005) each to Federal Express Corporation (FedEx) and United Parcel Service Co. (UPS), and six weekly frequencies (three in 2004 and three in 2005) to Northwest Airlines Inc. (Northwest).

Background

Until the recent amendment to the air services agreement between the United States and the People's Republic of China (PRC), U.S. carrier services between the United States and the PRC were limited to fifty-four weekly frequencies among four carriers: United Air Lines (United), FedEx, UPS, and Northwest. Thirty-four weekly frequencies were allocated for passenger/cargo "combination" services, with United having 21 weekly frequencies and Northwest having 13 weekly frequencies. Twenty weekly frequencies were allocated for all-cargo services, with FedEx having 11 weekly frequencies, UPS having 6 weekly frequencies and Northwest having 3 weekly frequencies.¹

Under the amendment to the air services agreement signed on July 24, 2004, the opportunities for the air carriers of both countries are greatly expanded. Effective August 1, 2004, the United States may designate an additional carrier for scheduled all-cargo services in the U.S.-China market and may allocate 21 additional weekly frequencies for all-cargo services. In addition, effective March 25, 2005, the U.S. may allocate an additional 18 weekly frequencies for scheduled all-cargo services among the designated carriers.²

¹ Under the terms of the bilateral agreement governing those allocations, frequencies can be transferred between cargo and combination service.

² In this order, we refer to the frequencies available August 1, 2004, as the "first phase," and to the frequencies available March 25, 2005, as the "second phase." The agreement also provides for new opportunities in combination services. See Order 2004-7-23, where we awarded the immediately available

On June 21, 2004, after the June 18 initialing of the Protocol between the two countries, the Department issued a Notice soliciting applications for the new opportunities for U.S. all-cargo carrier services.

Applications and Responsive Pleadings³

In response to the Department's June 21 Notice, seven all-cargo carriers filed applications for the new opportunities: (a) four carriers specializing predominantly in general freight service filed for the new all-cargo designation, as well as for underlying economic authority and frequencies in order to operate their proposed services⁴ and (b) the three incumbent all-cargo carriers (FedEx, UPS, and Northwest) filed for additional frequencies to expand their U.S.-China services. Each applicant filed answers and replies.⁵

By Order 2004-7-13, we determined that the public interest favored prompt implementation of the new rights and that, after affording the parties one additional opportunity to comment and/or clarify their proposals, along with one further opportunity for responsive comment, we would proceed on an expedited basis to a tentative decision (show-cause order). The order established a procedural schedule for these additional submissions.

Each applicant filed timely supplemental information and responses.⁶

Combined, the applicants seek a total of 81 weekly frequencies. The applicants' requests for the 39 available weekly frequencies in this proceeding are as follows:

	<u>August 1 Frequencies</u> (21 total available)	<u>March 25, 2005 Frequencies</u> (18 total available)
<u>New Entrants:</u>		
Arrow	7	6
Evergreen	7	(incremental amount if required) ⁷
Gemini	6	6
Polar	<u>6</u>	<u>3</u>
New Entrant Total Request:	26	15

14 combination frequencies equally between the two incumbent combination carriers, United and Northwest. With those allocations, United has 28 weekly combination frequencies and Northwest has 20 combination frequencies.

³ We offer here an overview of the authority requested. See Appendix A for a chart listing in more detail the applicants' proposals and Appendix B for a more detailed description of each carrier's position on its own application as well as the applications of the other applicants.

⁴ Arrow Air, Inc. (Arrow); Evergreen International Airlines, Inc. (Evergreen); Gemini Air Cargo, Inc. (Gemini); and Polar Air Cargo, Inc. (Polar).

⁵ The City of Houston and the Greater Houston Partnership filed an answer in support of Arrow's application.

⁶ Subsequently, Evergreen, FedEx and Northwest submitted corrections to their submissions.

⁷ Evergreen states that if it is not allocated seven frequencies in the first phase, it seeks the number of frequencies required in the second phase to equal seven. (Additional Information at 3)

August 1 Frequencies
(21 total available)

March 25, 2005 Frequencies
(18 total available)

Incumbent Requests for Additional Frequencies:

FedEx	12	6
Northwest	5	5
UPS	<u>6</u>	<u>6</u>
Incumbent Total Request:	23	17

Collectively, the new entrants and incumbents seek a total of 49 weekly frequencies from the 21 available August 2004, and 32 weekly frequencies from the 18 available March 2005.

Each applicant states that its proposal is superior and should take priority over the other applicants' proposals. Each applicant states that its proposal is for year-round services with no seasonal variations, and most state they have no code-share partners or arrangements for using these frequencies; however, some carriers note relationships with other entities or discussions with Chinese carriers about future relationships.⁸

New Entrant Applicants⁹

Of the four applicants for the new designation, two offer point-to-point U.S.-China services, one offers round-the-world services on one route, as well as point-to-point U.S.-China service on another route, and one offers services via its Asian-Pacific hub network.

Arrow proposes nonstop service with B-747 aircraft from six U.S. cities (Atlanta, Chicago, Houston, New York, Los Angeles, San Francisco) to five Chinese cities (Beijing, Shanghai, Xiamen, Guangzhou, and Shenzhen) during the 2004-2005 period.¹⁰

Gemini proposes nonstop service with MD-11 aircraft from five U.S. cities (New York, Anchorage, Chicago, Los Angeles, and San Francisco) to Shanghai in 2004 and from four U.S. cities (New York, Chicago, Anchorage, and Los Angeles) to Guangzhou in March 2005.¹¹

Evergreen proposes round-the-world service with B-747 aircraft twice weekly via Luxembourg and Tashkent, serving three U.S. cities in one direction (New York, Anchorage, Chicago) and one U.S. city in both directions (Houston) to Shanghai and Beijing. On its proposed second routing, Evergreen offers four weekly point-to-point flights, also with B-747 aircraft, from three U.S. cities (New York, Chicago, and Anchorage) to Shanghai and Beijing.¹²

⁸ August 2 Additional Information of Arrow at 2 and 6; JW-Supp-4, JW-Supp-5; August 2 Additional Information of Evergreen at 2 and August 9 Consolidated Answer of Evergreen at 1; August 2 Additional Information of Gemini at 3 and 5; PO-7, PO-11, *but see* fn 2 PO-2 where Polar discusses interline and surface transportation discussions; FX-105; NW-32, *but see* NW-25 and August 9 Reply Submission of Northwest at 12-13; August 2 Consolidated Response of UPS, Responsive Testimony at 5, UPS-100, and August 9 Consolidated Reply of UPS, Responsive Testimony at 8.

⁹ See Appendix A for a chart listing in more detail the applicants' proposals and Appendix B for a more detailed description of each carrier's position on its own application as well as the applications of the other applicants.

¹⁰ August 2 Additional Information of Arrow at 3 and JW-Supp 1.

¹¹ GR-7.

¹² August 2 Additional Information of Evergreen at 2.

Polar proposes services to Shanghai with B-747 aircraft via its network hub in Seoul, from three U.S. cities (New York, Chicago, and Anchorage) and one direction service to a fourth U.S. city (Miami) in 2004 and to an additional U.S. city (Los Angeles) in March 2005. Polar also shows connecting service to/from Santiago, Sao Paulo, Amsterdam, Tokyo, Taipei, Hong Kong, Jakarta, and Sydney.¹³

All of the applicants for the new designation are general freight carriers, although Polar indicates that it will carry both general and express cargo.¹⁴ The new entrant applicants argue that the majority of cargo being transported between the United States and China is general air freight and that there is a need for more capacity to carry general cargo. The new entrant applicants differ, however, on the nature of the market. Polar and Evergreen maintain that the market is directional and thus requires supporting traffic, while Arrow and Gemini maintain that the market is capable of supporting operations devoted solely to U.S.-China O&D traffic.¹⁵ All of the new entrant applicants, however, agree that they should receive sufficient frequencies to mount a competitive service vis-à-vis the incumbent U.S. and foreign carriers in the market; that the incumbent U.S. carriers should not take all of the available frequencies; and that a balance should be struck.¹⁶

Incumbent Applicants¹⁷

In the U.S.-China market, two incumbent carriers (FedEx and UPS) are predominantly express carriers and the third incumbent (Northwest) is primarily a general cargo carrier.¹⁸ All three carriers state, however, that they carry both types of traffic.¹⁹ Currently, FedEx operates 11 weekly frequencies in the U.S.-China market, serving Beijing, Shanghai, and Shenzhen, using MD-11 and A-310 aircraft. UPS operates 6 weekly frequencies, serving Shanghai and Beijing, with MD-11 and B757 aircraft. Northwest operates 3 weekly frequencies, serving Shanghai, with B747 aircraft.²⁰

FedEx seeks twelve frequencies for two round-the-world flights using MD-11 aircraft. The westbound round-the-world daily service would originate and terminate in Anchorage and would operate via Tokyo, Osaka, Shanghai, Almaty, Paris, Frankfurt, and Memphis. The eastbound round-the-world daily service, would originate and terminate in Memphis, operating via Newark, Frankfurt, Paris, Delhi, Shanghai, Tokyo, Shenzhen, and Anchorage five days a week; on the sixth day it would omit stops in Newark, Frankfurt, and Shenzhen, and add a stop in Beijing. FedEx also seeks six frequencies for service to a new market — Qingdao. This service would

¹³ PO-8.

¹⁴ PO-1 at 4; PO-2 at 2.

¹⁵ GR-RT-1 at 5; PO-1 at 3; August 9 Consolidated Response of Evergreen at 5; August 9 Consolidated Reply of Gemini at 2, 5-6; August 9 Response of Arrow at 7-8.

¹⁶ July 6 Answer of Arrow at 6; August 9 Response of Arrow at 7; July 6 Consolidated Answer of Evergreen at 5; July 8 Consolidated Reply of Evergreen at 2; August 2 Additional Information of Evergreen at 9; July 8 Consolidated Reply of Gemini at 3; GR-RT-1 at 5; August 9 Consolidated Response of Polar at 14-16.

¹⁷ See Appendix A for a chart listing in more detail the applicants' proposals and Appendix B for a more detailed description of each carrier's position on its own application, as well as the applications of the other applicants.

¹⁸ FedEx Argument in Support of Application at 5, 10-12, FX-T-1 at 25; FX-T-2 at 3 and 21; August 9 Consolidated Reply of UPS at 3-4; UPS-R-100 at 6; August 2 Submission of Northwest, Narrative at 7.

¹⁹ July 8 Consolidated Reply of FedEx at 13; FX-T-2 at 21; FX-108; August 9 Consolidated Reply of FedEx at 10 and 24-25; UPS-R-100 at 6 and UPS-R-103; August 2 Submission of Northwest, Narrative at 6-7; NW-8.

²⁰ FX-104, UPS-101, NW-33.

originate in Memphis and make stops in Anchorage and Seoul/Incheon, Korea, before returning to Indianapolis by way of Seoul, Tokyo, and Anchorage. Services between the U.S. points and Korea would use the MD-11 aircraft and change gauge to an A-310 aircraft between Korea and Qingdao.²¹

UPS proposes round-trip services from Chicago and Anchorage to Shanghai via Osaka with B767 aircraft, and over its hub at Macapagal (Clark) to Beijing five days a week with B757 aircraft; and proposing on the sixth day, to omit Osaka from the routing, serving Shanghai and Beijing from Louisville and Anchorage with MD-11 aircraft.²² In addition, UPS proposes 6 weekly round-trip flights to Guangzhou with nonstop service using MD-11 aircraft from Louisville and Anchorage. In support of this service, UPS states that it will bring the first nonstop daily service to the Pearl River Delta, China's largest cargo-generating region.²³

Northwest proposes to expand its existing B747 U.S.-Shanghai services. With receipt of the five frequencies it seeks, it would offer a total of seven nonstop roundtrip services per week between Shanghai and Anchorage, with one-stop service to and from Chicago. Two of the seven proposed flights would operate on a Chicago-Anchorage-Shanghai-Anchorage-Chicago routing, while the other five flights would operate beyond Shanghai to Tokyo and then back to Shanghai before returning to Anchorage.²⁴ With the other five frequencies it seeks, Northwest proposes to introduce service to and from Guangzhou, to and from Los Angeles via Narita (westbound) and via Osaka and Anchorage eastbound. Northwest states that its Shanghai and Guangzhou services will connect at Anchorage with freighter flights to and from four other U.S. gateways on Northwest's network: Chicago, Cincinnati, Los Angeles, and New York.²⁵

FedEx and UPS argue that the predominantly express nature of their business, *i.e.*, transporting time-sensitive products of high value door-to-door, requires more frequent services – and thus more frequencies – to meet the requirements of U.S. consumers,²⁶ and that there is a pre-eminent need for added express capacity in the immediate term.²⁷ They maintain that to be efficient, and thus maximize the benefits to U.S. consumers, they require multiple links to their regional hubs. They argue that general cargo shipments do not have such requirements.²⁸

FedEx and UPS each argues that it should receive all requested frequencies, maintaining that such allocations will enable it to expand its networks, improve connectivity throughout its systems, and synchronize its service offerings with the commercial needs of the shipping public.²⁹ Each also maintains that the other should not receive its requested allocation. FedEx argues that UPS is trying to “rack up” movements to qualify in 2007 for a hub and proposes to serve the large

²¹FX-T-1at4-13; FX-103.

²² To do this operation, UPS proposes to take existing change of gauge flights for the new Chicago-Shanghai service via Osaka and Shanghai and use new change of gauge flights on its existing Ontario-Shanghai service via Tokyo. *See* UPS-102 at 1.

²³ August 2 Consolidated Response of UPS at 5-6.

²⁴ August 2 Submission of Northwest Narrative at 3-4.

²⁵ *Id.* at 5.

²⁶ FedEx Argument in Support of Application at 5, 10-12, FX-T-1 at 22-34; FX-T-2 at 3; August 9 Consolidated Reply of FedEx at 9-10, 15; UPS-R-100 at 4,6-7.

²⁷ FX-T-2 at 2, 14-17; August 9 Consolidated Reply of FedEx at 8-10; August 9 Consolidated Reply of UPS at 3.

²⁸ FedEx Argument in Support of Application at 12; UPS-R-100; UPS-R-117.

²⁹ August 2 Argument in Support of Application of FedEx at 6, 8-9, 18; FX-T-1 at 1-4, 12, 33, FX-T-2 at 2, 6, 8-10; August 9 Consolidated Reply of FedEx at 6-7, 29-31; August 2 Consolidated Response of UPS at 1, 7; August 9 Consolidated Reply of UPS at 2.

Shanghai market with only small freighter aircraft.³⁰ UPS argues that FedEx's proposal does not optimize the use of U.S.-China frequencies; that FedEx proposes operations to a minor commercial center with small aircraft, yet requests new frequencies to replace existing ones when it could serve proposed markets by using existing beyond rights under new change-of-gauge provisions in the agreement.³¹ FedEx and UPS also argue that Northwest, the third incumbent, should not receive its full request, citing Northwest's capability of converting frequencies between combination and cargo services and its less than daily one-stop proposal for Guangzhou service.³²

Northwest, on the other hand, argues that there is evidence that a lack of sufficient general freight capacity exists, citing the additional "extra sections" and charter flights of U.S. and Chinese general freight carriers in 2003 and U.S. Department of Commerce data showing that a significant volume of traffic is carried via Hong Kong on non-U.S. carriers.³³ It also argues that the U.S. express carriers in the market hold a disproportionate number of frequencies for the relatively small percentage of cargo carried between the United States and China, and that there is a vital need for substantial expansion in the capacity of U.S. carriers to transport general freight.³⁴

All three incumbents argue that the newly designated all-cargo carrier in this case should be allocated very few frequencies (FedEx and Northwest argue no more than 5 frequencies are required by the new entrant, and UPS argues 4 or fewer frequencies are necessary).³⁵ FedEx also argues that the new entrant should be limited to a single allocation in the first phase, leaving the second phase to those companies that have already invested in the market.³⁶

Market Profile

China is already the United States' largest transoceanic trading partner.³⁷ Furthermore, according to global forecasts, China will grow faster than any other U.S. air freight market over the next two decades, with an annual average growth rate of 7.2% annually from the U.S. to China and 7.0% annually from China to the U.S.³⁸ In addition, China's domestic air cargo market is the fastest growing market in the world, projected to grow at an average rate of 10.3% per year.³⁹

The largest cargo airport by tonnage in China is Shanghai, followed by Beijing, Guangzhou, and Shenzhen.⁴⁰ The record indicates that the leading U.S. gateways for U.S.-China airborne trade are Chicago, New York, and Los Angeles, with these three cities accounting for 64% in volume in exports to China and 55% in imports from China.⁴¹

³⁰ August 9 Consolidated Reply of FedEx at 35-39.

³¹ August 9 Consolidated Reply of UPS at 5-8; UPS-R-100 at 11; UPS-R-111, UPS-R-108.

³² August 9 Consolidated Reply of FedEx at 16 fn 24 and at 22; August 9 Consolidated Reply of UPS at 9.

³³ *Id.* at 7-9, NW-19-NW-20; August 9 Reply Submission of Northwest at 3-4, NW-R-3.

³⁴ NW-5

³⁵ August 9 Consolidated Reply of FedEx at 3, and 14 of 41; August 2 Submission of Northwest, Narrative at 13; July 6 Consolidated Answer of UPS at 7; August 9 Consolidated Reply of UPS, Responsive Testimony at 11; UPS-R-100 at 13-14; UPS-R-117.

³⁶ July 6 Consolidated Answer of FedEx at 3.

³⁷ U.S. Census Bureau, Foreign Trade Statistics, "Top Trading Partners—Total Trade, Exports, Imports Year-to-Date May 2004."

³⁸ NW-3, *citing* Airbus Global Market Forecast 2003-2022.

³⁹ Boeing World Air Cargo Forecast 2002/2003 at 1 and 15.

⁴⁰ Airport Council International, *available at* www.airports.org/traffic/cargo2003.html; NW-17, 18; PO-15, PO-R-8; and UPS-104.

⁴¹ PO-2 at 1-2, PO-14.

U.S.-China trade is imbalanced directionally, with greater loads eastbound (from China to U.S.) than westbound (U.S. to China).⁴² The record in this case also demonstrates that, in terms of volume, more U.S.-China air cargo traffic consists of imports to the U.S. than exports from the U.S.⁴³ This fact is supported by the Department's own T-100 data. For calendar year 2003, the T-100 data indicate that 207,537 tons of cargo were transported between the two countries, with 59,470 tons (29%) going westbound from the U.S. to China and 148,067 tons (71%) going eastbound from China to the U.S. Of the cargo transported from China to the U.S., the T-100 data suggests that approximately 65% originated at Shanghai, 16% at Beijing, and just 1% at Guangzhou. The record in this proceeding also supports the conclusion that Shanghai is the largest freight center and most important market, Beijing the second, and Guangzhou the third.⁴⁴

The record shows that both the express and general cargo segments of the U.S.-China market have experienced high load factors.⁴⁵ The record also indicates that both the air express market and the general freight market can expect continued growth.⁴⁶ The applicants note that products transported in the market are diverse and vary widely by weight and by value.⁴⁷ According to a Boeing forecast, consumer goods dominate eastbound traffic, and westbound traffic is comprised of small packages and items needed to meet manufacturing requirements.⁴⁸

The record shows that all of the U.S. carriers currently providing scheduled cargo services in the U.S.-China market rely on global networks, including hubs in the Pacific, to manage the directional imbalance and to support transoceanic cargo services.⁴⁹ The record indicates that foreign carriers, including three Chinese carriers, also compete in the U.S.-China market. Chinese carriers operate 23 weekly frequencies, and ten other foreign carriers offer over 30 weekly services with capacity for U.S.-China cargo traffic. The record also shows that these carriers serve the market with both B747 and MD-11 aircraft.⁵⁰ The record indicates that several of the foreign carriers focus on general freight, but the record also demonstrates foreign competition in the express arena.⁵¹

Tentative Decision

⁴² FX-T-1 at 6, *citing* Boeing World Air Cargo Forecast 2002-2003; *see* Boeing World Air Cargo Forecast 2002-2003 at 56.

⁴³ NW-3; August 2 Supplemental Information of Polar at PO-1 at 3; August 9 Consolidated Reply of FedEx at 2.

⁴⁴ FX-T-1 at 7; PO-1 at 7; PO-2 at 8; August 2 Submission of Northwest at 1 and 4-5 and NW-17; August 9 Response of Arrow at 4; August 2 Submission of Northwest at 5; NW-18; UPS-104 at 2; UPS-R-111.

⁴⁵ August 2 Consolidated Response of UPS, Responsive Testimony at 4, FX-R-109, and NW-23.

⁴⁶ UPS-106 and NW-R-1, FX-T-2 at 16 *citing* the US-China Business Council; UPS-R-104; NW-9; NW-R-1.

⁴⁷ Examples of products transported are: eastbound from China - power generation equipment, electrical machinery and equipment, apparel, furniture, footwear, toys games, computer components, LCD screens, and garments on pallets; westbound to China - electronics, electrical machinery and equipment, power generation equipment, medical equipment, semiconductor machines. (UPS-104, August 2 Submission of Northwest, Narrative at 7, FX-T-1 at 29)

⁴⁸ FX-T-1 at 6, *citing* Boeing, World Air Cargo Forecast 2002-2003; *see* Boeing World Air Cargo Forecast 2002-2003 at 57.

⁴⁹ June 28 Application of NW at 4; July 8 Consolidated Reply of Northwest at 1; August 2 Submission of Northwest at 12; August 2 Consolidated Response at UPS at 4; UPS-R-100; August 9 Consolidated Reply of FedEx at 6-7.

⁵⁰ August 2 Submission of Northwest, Narrative at 16, 16 fn 20; PO-2 at 4; FX-120; FX-T-2 at 11, 16-22.

⁵¹ August 2 Submission of Northwest, Narrative at 16; FX-T-2 at 11.

At the onset of this proceeding, we noted that our principal objective would be to maximize the public benefits that would result from the authority awarded in this case, in terms of both which applicant would most likely offer and maintain the best service for the shipping public and of increasing competition in this still limited-entry market.⁵² Accordingly, in selecting a new entrant carrier, we must consider not only the benefits deriving directly from the services proposed, but also which carrier would offer the greatest potential for establishing a strong competitive presence in the market. Similarly, as to the incumbents, we want to make selections that will offer shippers an expanded range of service options, while promoting a competitive marketplace. We tentatively believe that our selections in this case will achieve these various ends.

Proposed Selection and Allocations

We have tentatively decided to select Polar as the new designated carrier to provide all-cargo service in the U.S.-China market and to allocate it nine weekly frequencies (six in 2004 and three in 2005). We have also tentatively decided to allocate twelve weekly frequencies (six in 2004 and six in 2005) each to FedEx and UPS, and six weekly frequencies (three in 2004 and three in 2005) to Northwest to expand their U.S.-China all-cargo services.

New Entrant

As noted, our new agreement with China offers the opportunity to enhance competition significantly in the U.S.-China air cargo market. We have tentatively decided that the selection of Polar would provide the greatest public benefits in this case because Polar is in the best position to compete with well-established incumbents in the market and because it would provide significant service benefits. Polar's advantage stems from the facts that it is the only new carrier applicant with extensive operations and resources in the region (including a hub), the only applicant with demonstrated broad experience in scheduled cargo services in transpacific and intra-Asia markets, and the only applicant that demonstrates it has a road feeder service in the U.S. to provide shippers access to multiple interior points in the U.S. It is, in short, the applicant that has best demonstrated that it has the resources to provide vigorous competition to the strong competitors already in the market.

Polar has persuasively argued that its use of an Asian hub to support its services will help the new entrant succeed in an extremely competitive environment. Specifically, we tentatively find that Polar's hub operations should lessen the adverse impact of directionality, while still providing shippers with the options they need. Polar states that, through its networking system, it can increase per-flight allocations for U.S.-China shippers during times of greater demand, or if demand should drop, to maintain the number of flights with more support from other markets served on the Polar system.⁵³ We tentatively find that, by serving China through its Incheon hub and focusing its services from the three largest U.S. origin and destination cities (Chicago, New York, and Los Angeles) and on the major Chinese cargo center (Shanghai), Polar's services not only provide consumers new options in the principal U.S.-China markets, but Polar is also more likely to implement services quickly and sustain its proposed services.

We are aware that the other applicants have asserted that Polar's hub operation will detract from its available capacity for U.S.-China traffic. However, we tentatively find that Polar has persuasively argued that its ability and experience, combined with its B747 aircraft, allows it to be responsive to U.S.-China shipper needs by effectively calibrating its scheduled offerings to the

⁵² Order 2004-7-13 at 2.

⁵³ PO-2 at 5-6.

needs of the marketplace. For example, Polar states that its service over the Incheon hub enables it to efficiently “address directional east/west trade flows through the combination of multiple origin and destination points in the U.S. and Asia.”⁵⁴

We also note that Evergreen has questioned Polar’s sustainability in the market, citing the fact that Polar is a wholly-owned subsidiary of Atlas Air Worldwide Holdings, which recently filed for Chapter 11 bankruptcy.⁵⁵ Polar acknowledges that it and its parent company were in bankruptcy proceedings, but states that both emerged successfully from Chapter 11 on July 28, 2004, under a comprehensive financial restructuring program.⁵⁶

While the proposals of the other applicants are not without certain attractive individual features, we tentatively find that none of the other proposals offers the overall range of positive attributes that we see in Polar’s proposal.

The record fails to show that any of the other applicants currently provides scheduled all-cargo service in the Asia-Pacific market or has resources in the region comparable to Polar’s that will enable it to compete as actively in the scheduled all-cargo market. Given the circumstances presented here, both in terms of the existing competitive posture of the market and the strong public interest in seeing the selected carrier quickly implement and optimize use of these highly valuable limited-entry rights, we tentatively see this distinction as important. None of the other applicants offers the above-described advantages in support of China services that we tentatively see as deriving from the possession of an Asian hub.⁵⁷

With respect to Arrow’s proposal, we are not persuaded that Arrow has the ability to acquire the equipment that it says it will use on its proposed China services. Arrow does not currently have B747 equipment in its fleet, a fact that it does not dispute on the record. While Arrow claims that it will be able to secure equipment from alternative sources, it has not persuasively demonstrated that such equipment would be immediately available, something that takes on particular importance given the expedited nature of this proceeding. Arrow’s lack of experience in the Asia scheduled service market and its lack of a scheduled service network would place it at a competitive disadvantage at this time compared to Polar.

Evergreen’s proposal also poses concerns, particularly with regard to its lack of demonstrated experience in Asia, its lack of a network to support its proposed U.S.-China services, and its relatively limited experience in operating scheduled services generally. Rather, Evergreen appears principally to be focused on charter operations.⁵⁸ Given that we have the ability to select a carrier in this proceeding that has both the experience and established network, we tentatively find that the selection of Evergreen would not best serve the public interest.

With regard to Gemini, in addition to its lack of a network structure, parties have argued that it lacks experience in scheduled service, noting that Gemini’s operations consist predominantly of wet leases to other carriers. Gemini has not persuasively refuted this assertion in its pleadings. We also note that Gemini proposes the smallest equipment size of any of the new entrant applicants. It is true that Gemini might be viewed as compensating for its smaller payload by

⁵⁴ PO-1 at 6; August 9 Consolidated Response of Polar at 4.

⁵⁵ August 2 Additional Information of Evergreen at 5-8.

⁵⁶ July 8 Reply of Polar at 8; August 9 Consolidated Response of Polar at 10, fn. 9.

⁵⁷ In this regard, we would note that each of the established incumbent carriers has such a hub.

⁵⁸ Evergreen competed for and was awarded frequencies to operate scheduled all-cargo services in the U.S.-Hong Kong market last year. It declined to use those frequencies, returning them to the Department.

proposing to operate a greater number of flights. However, we tentatively find that the public interest is not best served by awarding Gemini twelve valuable and limited frequencies when we can achieve the advantages of new entry while still preserving additional frequencies for meeting other important objectives in this market.

Polar, on the other hand, presents an entire range of positive attributes as described above while suffering from none of the detracting elements characterizing the proposals of the other three new entrant applicants. We, therefore, tentatively find that the public interest clearly favors a Polar selection, and we have tentatively decided to allocate Polar the six first-phase frequencies and the three second-phase frequencies that it has requested. We tentatively regard this number of frequencies as appropriate for Polar to gain a firm foothold in the U.S.-China general cargo market. We also tentatively see the award of a total of nine new carrier frequencies over the two phases for predominantly general freight carriage as representing a meaningful pro-competition addition to the U.S.-China general cargo sector.

The incumbent carriers argue that the new designated carrier should not be allocated such a high number of frequencies; that the award of frequencies should be limited only to the 2004 allocation; and that the frequencies would be put to use better by the incumbent carriers. We tentatively disagree.

The new entrant carrier will face enhanced competition from the U.S. incumbents (see below), along with substantial competition — especially on the general freight side — from foreign carriers. Thus, we tentatively believe that our proposal is a reasonable approach for providing to Polar enough frequencies to introduce, develop, and maintain a workable, competitive operation, while still leaving the bulk of the frequencies for the incumbents to offer new services.

We tentatively propose to issue Polar a certificate of public convenience and necessity that authorizes it to provide scheduled foreign air transportation of property and mail between a point or points in the United States, via any intermediate points, to a point or points in China open to scheduled international operations, and beyond to any points outside China, with full traffic rights and to integrate the certificate authority awarded with its existing certificate and exemption authorities.⁵⁹

Backup Award

In setting forth the procedures for this case, we stated that we would consider whether to award backup authority for the certificate award in this case based on the material in the record.⁶⁰ In light of the record, we have tentatively decided not to select a backup carrier for the new entrant award in this case.

⁵⁹ In Polar's June 28 application, the broad certificate authority was worded differently. We propose to award the certificate to reflect the broad authority as reflected in the agreement. Polar has suggested that we grant temporary exemption authority *sua sponte* to the new designated carrier, as well as to the incumbents, pending a final decision in this case. Consistent with our stated commitment to enabling the use of U.S. rights as soon as possible, we intend to issue a final decision in this case as soon as possible. Therefore, we are not now persuaded to grant temporary exemption authority.

⁶⁰ Order 2004-7-13 at 3.

Incumbent carriers

Having tentatively selected Polar as the new designated carrier and having tentatively allocated it nine weekly frequencies (six in 2004 and three in 2005), we turn our attention to the incumbent carrier requests for frequency allocations. With our tentative allocation to Polar, thirty frequencies remain for incumbent carrier services (fifteen for 2004 services and fifteen for 2005). We have tentatively decided to allocate FedEx and UPS each six frequencies for 2004 and each six frequencies for 2005, and to allocate Northwest three frequencies for 2004 and three frequencies for 2005.

The U.S.-China air cargo market has two distinct segments which need to be addressed, general air freight and express services, with certain carriers serving primarily one sector and certain carriers the other (although some carriers specializing in the one may also serve the other). The substantial number of additional frequencies available under the new U.S.-China agreement means that, even after our tentative frequency award to Polar, we still have a considerable number of frequencies remaining to address various carrier needs and the overall needs of the U.S.-China shipping public, as well as to promote enhanced competition in each cargo sector.

FedEx and UPS note that express carrier services typically require six weekly frequencies to meet the needs of the express cargo shipper.⁶¹ We have carefully weighed the arguments of the incumbents regarding the number of frequencies that should be allocated among them, and have considered their respective service proposals. Both propose new service options and additional capacity to and from the most important air cargo gateways linked to their broader regional and global networks. Accordingly, we tentatively propose to award each of the incumbent express carriers six weekly frequencies in 2004 and in 2005. We believe that such an award will not only result in the introduction of valuable new services for the benefit of express shippers, but will also advance competition in this important sector of the cargo market, as well as in the cargo market as a whole.⁶²

We have tentatively decided to award the remaining six frequencies to Northwest. We tentatively believe that these additional general freight frequencies, when combined with the new general freight services offered by Polar, will constitute an appreciable enhancement of U.S. carrier services in this segment of the market, increasing service options and promoting competition. In awarding Northwest fewer than the 10 frequencies it requested, we were cognizant of Northwest's ability to carry belly cargo on its scheduled combination services, as well as to convert some combination frequencies to all-cargo frequencies.

Economic Authority

Consistent with our policy with respect to limited-entry routes, we propose to issue a certificate to Polar in the form of a five-year experimental certificate of public convenience and necessity under 49 U.S.C. 41102(c). We propose to condition the certificate to require the carrier to implement services within 90 days of issuance of the certificate. If we finalize the tentative

⁶¹ UPS-109; August 9 Consolidated Reply of FedEx at 15 fn 23. *See also* Order 2000-11-24 at 17, where we note that for all-cargo purposes, six weekly frequencies are effectively daily service.

⁶² To the extent that FedEx argues that the Department's request for additional information still did not provide sufficient information to compare the proposals in this proceeding, we have carefully considered all proposals in this proceeding and the information supplied by the carriers and tentatively conclude that the record is adequate and correctly supports all allocations tentatively made in this decision, including those to FedEx.

award proposed in this order, we would issue Polar a certificate that includes a condition requiring Polar to commence its services no later than 90 days from the service date of the order issuing the certificate.

We also propose to award Northwest and UPS each an exemption to enable them to provide their proposed services. Northwest's certificate authorizes services between the terminal point Chicago, IL; the intermediate points Los Angeles, CA; San Francisco, CA; Seattle, WA, or Honolulu, HI; an intermediate point in Japan and the coterminal points Shanghai, Guangzhou, and Beijing, China and between Detroit, Michigan and Beijing, China. UPS' certificate authorizes service between the terminal point Anchorage, Alaska, via the intermediate point Tokyo, Japan, and the coterminal points Beijing and Shanghai, the People's Republic of China. Northwest needs Anchorage for its nonstop proposal between Anchorage and Shanghai, and UPS needs Guangzhou for its proposed nonstop Anchorage-Guangzhou service.

In its application, however, UPS seeks frequencies to enable the carrier to provide additional scheduled all-cargo air transportation between the U.S. and China, and China and the world, and requests the Department to grant such other relief as may be deemed just and necessary.⁶³ Given that UPS' certificate does not specifically authorize the services proposed by UPS, we will consider the "other relief as may be deemed just and necessary" language to encompass a request for exemption authority. Northwest's application did not contain such a proviso; however, we tentatively believe that should Northwest elect to use the frequencies allocated in this proceeding for the Anchorage-Guangzhou service, that the public interest would be served by such operations and therefore we propose to grant Northwest an exemption as well.

Also, consistent with our standard practice, we propose to require that the services with these frequencies be instituted within 90 days from the date of service of a final order in this proceeding. We also propose, consistent with our standard practice, that the frequencies allocated in this proceeding will be subject to our standard 90-day dormancy condition, wherein any frequency not operated for a period of 90 days (once inaugurated) would be deemed dormant, except where service in the market is seasonal. As all of the carriers in this proceeding have proposed year-round services, the seasonal proviso is not applicable. Under the dormancy condition, if any of the frequencies allocated are not used for a period of 90 days (once inaugurated), the frequency allocation with respect to each frequency would expire automatically and the frequency would revert to the Department for reallocation. The dormancy condition applicable to the frequencies tentatively allocated here would begin on the required startup date, or in the case of March 2005 frequencies, the date that the frequencies become available.⁶⁴

ACCORDINGLY,

1. We tentatively select Polar Air Cargo, Inc. to provide scheduled foreign air transportation of property and mail between a point or points in the United States, via any intermediate point, to a point or points in China open to scheduled international operations, and beyond to any points outside of China, with full traffic rights;

⁶³ June 28 Application of UPS at 1 and 5.

⁶⁴ We remind carriers that the frequencies allocated represent valuable rights obtained in exchange for rights to Chinese carriers. Accordingly, the frequencies allocated are for weekly operations. A scheduled carrier may not bank frequencies from one week to another and failure to use the frequencies on a weekly basis will result in forfeiture of the unused frequencies.

2. We tentatively allocate Polar nine weekly frequencies for its proposed services, subject to our standard 90-day dormancy condition;

3. We tentatively allocate twelve weekly frequencies to Federal Express Corporation (*i.e.*, 6 weekly frequencies for 2004 services and 6 weekly frequencies for 2005 services); twelve weekly frequencies to United Parcel Service Co. (*i.e.*, 6 weekly frequencies for 2004 services and 6 weekly frequencies for 2005 services); and 6 weekly frequencies to Northwest Airlines, Inc. (*i.e.*, 3 weekly frequencies for 2004 services and 3 weekly frequencies for 2005 services) — all, subject to our standard 90-day dormancy condition;

4. We tentatively grant Northwest and UPS the exemption authority needed to implement their proposed service plans;

5. To the extent not granted in this order, we tentatively deny the applications in Docket OST-2004-18468;

6. We direct any interested parties having objections to our tentative decisions set forth in this order and described in ordering paragraphs 1 through 5 above, to file their objections with the Department's Docket Operations, Docket OST 2004-18468, U.S. Department of Transportation, 400 Seventh Street S.W., Room PL-401, Washington DC, 20590, no later than 7 calendar days from the date of service of this order; answers to objections shall be due no later than 4 business days thereafter;⁶⁵

7. If timely and properly supported objections are filed, we will afford full consideration to the matters or issues raised by the objections before we take further action;⁶⁶

8. We will serve this order on the parties to the captioned docket in this order; the Ambassador of the People's Republic of China in Washington, D.C.; the U.S. Department of State (Office of Aviation Negotiations), and the Federal Aviation Administration.

By:

KARAN K. BHATIA
Assistant Secretary
for Aviation and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at
http://dms.dot.gov/reports/reports_aviation.asp*

⁶⁵ The original filing should be on 8 1/2" x 11" white paper using dark ink (not green) and be unbound without tabs, which will expedite use of our imaging system. In the alternative, filers are encouraged to use the electronic filing submission capability available through the Dockets/DMS Internet site (<http://dms.dot.gov>) by following the instructions at the web site.

⁶⁶ Because we are providing for the filing of objections to our tentative decision, we will not entertain petitions for reconsideration of this order.

Appendix A

2004 Cargo Designation&2004/2005 All-Cargo Frequencies (US-PRC)

<u>Carrier</u>	<u>Frequencies</u>	<u>Routing</u>	<u>Aircraft/Capacity</u>	<u>Aircraft Availability</u>
Arrow	7 (8-1 freq) 6 (3-25 freq) Total: 13 (states a new all- cargo entrant would need a minimum of five)	<p>For 8-1-04 frequencies:</p> <p>Flgt 1: Atlanta-Anchorage*-Beijing-Shanghai Sapporo*-Anchorage*-Atlanta (Sun-Tues) Flgt 2: Chicago-Anchorage*-Shanghai-Sapporo*- Anchorage*-Chicago (Fri-Sat) Flgt 3: Houston-Anchorage*-Xiamen-Guangzhou- Sapporo*-Anchorage*-Houston (Wed-Thur) Flgt 4: Los Angeles-San Francisco-Anchorage*. Shenzhen-Sapporo*-Anchorage*-San Francisco- Los Angeles (Wed-Fri) Flgt 5: New York-Anchorage*-Beijing-Shanghai- Sapporo*-Anchorage*-New York (Sun-Mon) Flgt 6: Chicago-Anchorage*-Shenzhen-Sapporo*- Anchorage*-Chicago (Mon-Wed) Flgt 7: Los Angeles-San Francisco-Anchorage* Guangzhou-Sapporo*-Anchorage*-San Francisco Los Angeles (Fri-Sun)</p> <p>For 3-25-05 frequencies:</p> <p>Flgt 1: New York-Anchorage*-Guangzhou- Sapporo*-Anchorage*-New York (Wed-Fri) Flgt 2: Atlanta-Anchorage*-Guangzhou-Sapporo*- Anchorage*-Atlanta (Fri-Sat) Flgt 3: Houston-Anchorage*-Xiamen-Guangzhou- Sapporo*-Anchorage*-Houston (Tues-Thur) Flgt 4: Chicago-Anchorage*-Beijing-Shanghai- Sapporo*-Anchorage*-Chicago (Wed-Thur) Flgt 5: Los Angeles-San Francisco-Anchorage*. Shanghai-Sapporo*-Anchorage*-San Francisco- Los Angeles (Mon-Wed) Flgt 6: Chicago-Anchorage*-Guangzhou-Sapporo*- Anchorage*-Chicago (Fri-Sun)</p>	<p>B-747 220,000 lbs</p>	<p>Will wet lease from Tradewinds</p> <p>Arrow does not have a 747 in its fleet.</p>

*(indicates tech stop)

Carrier	Frequencies	Routes	Aircraft/Capacity	Aircraft Availability
Polar	6 (8-1 freq)	For 8-1-04 frequencies: (see note below) #1: New York-Chicago-Seoul-Shanghai-Seoul Anchorage-Chicago (Tues/Wed) #2: New York-Chicago-Anchorage-Seoul-Shanghai-Seoul-Anchorage-Chicago (Wed/Thurs) #3: Chicago-Seoul-Shanghai-Seoul-Anchorage-New York-Chicago (Thurs/Fri) #4: Chicago-Anchorage-Seoul-Shanghai-Seoul-Anchorage-New York (Fri/Sat) #5: New York-Chicago-Shanghai-Seoul-Anchorage-Chicago-New York (Sat/Sun) #6: Chicago-Seoul-Shanghai-Seoul-Anchorage-Chicago-Miami (Sat/Sun) (on#6,Seoul-Shanghai leg is extension of existing service)	B747-400/ 265,000 lbs B747-200/ 246,000 lbs B-747-400	On hand, currently in charter operations
	3 (3-25 freq) Total: 9 (needs 9)			
		For 3-25-05 frequencies: (see note below) #7: Los Angeles-Seoul-Shanghai-Seoul-Anchorage-New York (Sun/Tues) #8: New York-Chicago-Seoul-Shanghai-Anchorage-New York (Wed/Thurs) #9: New York-Anchorage-Seoul-Shanghai-Seoul-Los Angeles (Fri/Sat)	B747-400 B747-400 B-747-400	
		(Note: Polar's route map shows connecting service to/from Santiago, Sao Paulo, Amsterdam, Tokyo, Taipei, Hong Kong, Jakarta and Sydney)		

<u>Carrier</u>	<u>Frequencies</u>	<u>Frequency Only Applicants (Incumbents)</u> <u>Routing</u>	<u>Aircraft/Capacity</u>	<u>Aircraft/Availability</u>
FedEx	12 (8-1 freq) 6 (3-25 freq) Total: 18 (for first phase, carrier wants 12; if gets less, favors Round-the-World service over Qingdao; for second phase, carrier needs all 6)	<p>For 8-1-04 frequencies: <u>Westbound Round-the-World:</u> (6 frequencies) Memphis-Anchorage-Tokyo-Osaka-Shanghai-Almaty-Frankfurt-Paris-Memphis (5xwk) Memphis-Anchorage-Tokyo-Osaka-Shanghai-Almaty-Paris-Memphis (1xwk)</p> <p><u>Qingdao Service:</u> (6 frequencies) Memphis-Anchorage-Seoul-Qingdao-Seoul-Tokyo-Anchorage-Indianapolis (6 days/week)</p>	MD-11 196,000 lbs. MD-11 MD-11/A310 A310=81,200 lbs (A310 chg of gauge between Korea & Qingdao)	On hand, in fleet or from those committed for delivery in relevant time period
		<p>For 3-25-05 frequencies: <u>Eastbound Round-the-World:</u> (6 frequencies) Memphis-Newark-Frankfurt-Paris-Delhi-Shanghai-Tokyo-Shenzhen-Anchorage-Memphis (5 x wk)</p> <p>Memphis-Paris-Delhi-Shanghai-Tokyo-Beijing-Shanghai-Anchorage-Memphis (1 day a week)</p>	MD-11	
Northwest	5 (8-1 freq) 5 (3-25 freq) Total: 10 (minimum it will accept is 5. First priority is to Shanghai service)	<p>For 8-1-04 frequencies: Chicago-Anchorage-Shanghai-Tokyo-Shanghai-Anchorage-Chicago (3 days/wk but combined w/ 2 already held for 5 day a week service)</p> <p>Chicago-Anchorage-Shanghai-Anchorage-Chicago (2 days/wk)</p>	B747-200F 220,400 lbs or 100 metric tons B747-200F	On hand, but one of two of the aircraft needed for first phase will need to go into maintenance in the first quarter of 2005. Carrier will acquire or lease aircraft to replace that carrier and those needed for 2005 operations.
		<p>For 3-25-05 frequencies: Los Angeles-Tokyo-Guangzhou-Osaka-Anchorage-Los Angeles (5 days/wk)</p>	B-747-200F	

<u>Carrier</u>	<u>Frequencies</u>	<u>Routings</u>	<u>Aircraft/Capacity</u>	<u>Aircraft Availability</u>
UPS	<p>6 (8-1 freq) 6 (3-25 freq) Total: 12</p> <p>(says priority in 2004 is additional is additional daily access to Shanghai; and for 2005, first US service to Guangzhou. Thus, needs 12)</p>	<p>For 8-1-04 frequencies: Chicago-Anchorage-Osaka-Shanghai-Clark-Beijing-Shanghai-Osaka-Anchorage-Chicago (5 days/wk) (change of gauge service between Shanghai-Clark-Beijing-Shanghai using the B757 rather than B767 & also using current change of gauge flights)</p> <p>Louisville-Anchorage-Shanghai-Clark-Beijing-Shanghai-Anchorage-Louisville (1 day/wk) (change of gauge service between Shanghai-Clark-Beijing-Shanghai using the B757 rather than B767)</p>	<p>B767/B757 B767=109,000 lbs to 124,000 lbs B757=not stated</p> <p>MD-11/B757 MD-11=179,000lbs to 195,000 lbs B757=not stated</p>	<p>On hand, available and operating in UPS' international markets</p>
		<p>For 3-25-05 frequencies: Louisville-Anchorage-Guangzhou-Anchorage-Louisville (6 x week)</p>	MD-11	<p>On order under freighter conversion contracts--to be delivered in November 2004 and March 2005.</p>

Positions of the Parties

A. New Entrant Applicants

Arrow states that it will provide general air freight “direct service to more U.S. business centers responsive to the demand for new all-cargo service in the fast growing U.S.-China markets than any other applicant,”¹ and states that will provide service to the most cities with the most capacity.² It maintains that it has the managerial expertise and knowledge, the commitment, financial capability, and aircraft to implement its proposed schedules in a timely way.³ It cites for experience its operations in Asia, having a charter contract service in the Pacific throughout Asia from 2001-2003, and its having received numerous calls from global shippers regarding Arrow’s proposal.⁴ Arrow states that it uses wide-body B747, DC-10, and DC-8 aircraft and is “prepared to introduce B747F aircraft into markets it is authorized to serve using wet-lease or other appropriate arrangements subject to approval of the Department and FAA regulatory review.”⁵ For the proposed services, Arrow states that it will lease aircraft from Tradewinds Airlines to be operated for Arrow under a wet-lease contract,⁶ and will have additional support of aircraft from Miami Leasing, an affiliated company.⁷ Arrow states that, having emerged from bankruptcy, it is “financially re-energized and invigorated by new investors that are eager to expand Arrow successfully into new markets.”⁸ Arrow states “it has interline agreements with numerous air carriers with cargo capability that assures smooth flow of cargo to and from shippers and receivers.”⁹ Arrow argues that a balance must be struck in the allocation of frequencies, and that at least one third of the frequencies should be to the new entrant all-cargo airlines.¹⁰

In response, Arrow is described as a carrier whose operations have been and are centered at Miami and focus on Latin America,¹¹ that has no prior experience in China or the broader Asia market, and that has no network or hub to aid its entry into China.¹² It is also argued that Arrow does not have the stated equipment for the service and that obtaining and certifying the aircraft will cause significant time delays in the implementation of service; that acquiring the aircraft will pose financial and operational burdens; and that two aircraft may not be adequate to support the proposed daily operations from Chicago, San Francisco, and Los Angeles.¹³ Tradewinds, from which Arrow says it would wet lease its proposed 747 aircraft, is described as a carrier that “has historically operated only A300 aircraft.”¹⁴ Arrow’s proposal with five service points in China

¹ August 2 Additional Information of Arrow at 6.

² August 9 Response of Arrow at 3.

³ August 2 Additional Information of Arrow at 4, 7.

⁴ July 8 Reply of Arrow at 3; Exhibit JW-Supp-6 at 1.

⁵ July 8 Reply of Arrow at 5.

⁶ *Id.* at 4; Exhibit JW-Supp-4; *see also* July 8 Reply of Arrow at 3.

⁷ August 2 Additional Information of Arrow at 4; Exhibit JW-Supp 6 at 3.

⁸ August 9 Response of Arrow at 9.

⁹ June 28 Application of Arrow at 6; Exhibit JW-6.

¹⁰ July 6 Answer of Arrow at 6.

¹¹ August 9 Reply Submission of Northwest at 21.

¹² July 6 Answer of Polar at 8-9; August 9 Consolidated Response of Polar at 8; July 6 Consolidated Answer of FedEx at 5; August 9 Consolidated Reply of FedEx at 19.

¹³ July 6 Consolidated Answer of Gemini at 2; August 9 Consolidated Reply of Gemini at 10; July 6 Answer of Polar at 8; August 9 Reply Submission of Northwest at 22; July 6 Consolidated Answer of FedEx at 5.

¹⁴ Consolidated Response of Evergreen, at 3.

from numerous US gateways is described as “not realistic”¹⁵ and its offering is described as more resembling charters, not scheduled service.¹⁶

Evergreen maintains that its commitment to the U.S.-China market is well established and that it has worked to create a firm presence in China, citing an office in Beijing and efforts to acquire a warehouse facility.¹⁷ Moreover, it cites the presence of offices in Hong Kong and Seoul, as well as its experience of operating in the U.S.-China and -Hong Kong charter markets for over ten years.¹⁸ It maintains that its twice-weekly round-the-world routing will enable “the carrier to capitalize on the strong growth in Europe-Asia eastbound cargo market,” and that it will tap into the Europe to Asia market as part of its overall service pattern.¹⁹ This twice weekly round-the-world flight will also diminish its “exposure to the imbalance in North America-Asia cargo demand.”²⁰ Evergreen states that on these flights approximately 50% of aircraft capacity will be dedicated to traffic from the U.S. to China, with the remaining capacity filled with traffic from Europe and Central Asia to China; but, it states that should U.S. to China traffic prove greater than anticipated, Evergreen would modify its plans to dedicate up to 100% of the aircraft capacity to U.S.-China traffic. On the return leg of this route, Evergreen estimates that 100% of aircraft capacity would be dedicated to traffic from China to the U.S.²¹ It also states that, on its five weekly frequencies for round-trip transpacific routings, it will dedicate 100% capacity to U.S.-China traffic on each of the five weekly trips.²² It argues that the Department should consider the importance of new competition as recognized by federal statutes that urge an avoidance of unreasonable industry concentration and a strengthening of competition among U.S. carriers.²³ Evergreen acknowledges that it previously held authority to China and that, after having encountered difficulties with the Chinese in implementing services, it sold the route to FedEx.²⁴ Evergreen maintains that its “business decisions to withdraw from or defer entry into market situations that are unprofitable in order to preserve corporate financial integrity should be viewed as a positive by the Department.”²⁵ Evergreen takes no position on the requests of the incumbent carriers with the exception of stating that “the Department should first grant the frequencies as fully requested by the new entrant designee, before awarding additional frequencies to the existing major-carrier designees.”²⁶

In response, some of the other applicants argue that Evergreen will incorporate a substantial amount of cargo between China and third countries at the expense of capacity that otherwise would be dedicated to the U.S.-China market.²⁷ A number of applicants also argue that the rights available in this case are too valuable to risk being awarded to Evergreen and then having them

¹⁵ Additional Information of Evergreen at 3.

¹⁶ Consolidated Response of Polar at 9.

¹⁷ EIA-CR-1 at 1.

¹⁸ July 6 Consolidated Answer of Evergreen at 4.

¹⁹ August 9 Consolidated Response of Evergreen at 5; July 6 Consolidated Answer of Evergreen at 2, 4.

²⁰ August 9 Consolidated Response of Evergreen at 5.

²¹ August 3 correction to August 2 Additional Information of Evergreen at 2.

²² *Id.*

²³ August 2 Additional Information of Evergreen at 9.

²⁴ July 8 Consolidated Reply of Evergreen at 3-5.

²⁵ August 2 Additional Information of Evergreen at 8.

²⁶ July 6 Consolidated Answer of Evergreen at 5.

²⁷ August 9 Consolidated Reply of Gemini at 1; July 6 Answer of Arrow at 3; August 9 Response of Arrow at 6.

returned for reallocation to another applicant, citing Evergreen's past experience in limited-entry markets.²⁸

Gemini proposes service to Shanghai and Guangzhou.²⁹ It states that its proposal is designed to enable it to introduce new service to China at a level that is economically viable and to allow it to establish itself in the U.S.-China marketplace.³⁰ It states that it "will dedicate the entire capacity of its flights (except for marginal quantities of transfer traffic) to the transportation of U.S.-China Third and Fourth Freedom traffic."³¹ Gemini states that its proposal offers balanced service among New York, Chicago, and Los Angeles.³² Gemini argues that its proposal offers greater overall capacity, greater U.S.-China capacity, and a greater number of frequencies to serve U.S.-China markets than new entrant applicants Polar and Evergreen, and that its proposal equals or exceeds the latter two carriers' proposals in number of U.S.-China markets served with direct, single-plane trips.³³ Gemini states that the U.S.-China cargo market has a vital need for a substantial expansion of capacity for general freight and that the Department should give its proposal for 12 frequencies priority to carry general freight, and that the remaining frequencies should be allocated among the incumbents in a manner that also gives priority to general freight transportation.³⁴ Gemini maintains that the directional imbalance of demand in the U.S.-China market is eroding; that the seasonal fluctuations in traffic demand will become less significant; and that the new authority awarded in this proceeding will hasten directional balance. It argues that the new designee, with sufficient frequencies per week, serving both Shanghai and Guangzhou, will tap new growth and reclaim traffic that goes over Hong Kong between the United States and China.³⁵ It further argues that the concentration of a huge number of frequencies among the incumbent carriers would cripple, if not doom, the ability of the new entrant to compete effectively.³⁶

In response, there are assertions that Gemini lacks familiarity with China and transpacific markets; and that it has little or no experience as a scheduled carrier.³⁷ Various applicants assert that Gemini's Asia experience has been limited to charters or wet-lease operations for foreign carriers, with one noting that Gemini's own web site states that it is the "largest Aircraft, Crew, Maintenance and Insurance (ACMI) operator of DC-10-30F aircraft worldwide";³⁸ another that Gemini has leased all of its aircraft to other carriers under long-term contracts;³⁹ and another that Gemini does not sell cargo capacity on its own behalf on wet-leased aircraft.⁴⁰ It is also argued

²⁸ August 9 Response of Arrow at 6-7; August 9 Consolidated Response of Polar at 10-11; July 6 Answer of Polar at 9-10; August 9 Consolidated Reply of FedEx at 18-19; August 9 Reply Submission of Northwest at 21.

²⁹ August 2 Additional Information of Gemini at 2.

³⁰ July 8 Consolidated Reply of Gemini at 2.

³¹ August 9 Consolidated Reply of Gemini at 1.

³² *Id.* at 6.

³³ July 6 Consolidated Answer of Gemini at 2-3; August 9 Consolidated Reply of Gemini at 7-9.

³⁴ August 9 Consolidated Reply of Gemini at 2-3.

³⁵ Exhibit GR-RT-1 at 2.

³⁶ July 8 Consolidated Reply of Gemini at 3.

³⁷ August 9 Reply Submission of Northwest at 22; August 9 Response of Arrow at 6; July 6 Answer of Polar at 6. Polar also asserts that Gemini's inclusion at the supplemental information stage of a Guangzhou proposal to go along with its Shanghai proposal appeared "to be less for reasons of service and more for reasons of gaming the selecting process." (August 9 Consolidated Response of Polar at 12-13.)

³⁸ July 6 Answer of Polar at 11.

³⁹ August 9 Response of Arrow at 5.

⁴⁰ August 2 Additional Information of Evergreen at 4.

that Gemini does not have the specialization necessary to conduct successful scheduled operations in the fiercely competitive U.S.-China market.⁴¹

Polar states that it will be a vigorous competitor in the U.S.-China market; that it has concentrated on serving shippers and consignees in the U.S.-Asia market; and that this region has played a central role in the development of its international network of scheduled services.⁴² It states that it has a well-developed international scheduled route network with extensive operations in Asia centering around its hub at Seoul (Incheon),⁴³ and that this networking system equips it “with a mechanism to address directional east/west trade flows through the combination of multiple origin and destination points in the U.S. and Asia.”⁴⁴ Polar says that its network-type proposal is comparable to the services of the three U.S.-China incumbents, --all of which “have extensive Asia networks and, through the use of their hubs, integrate their China services with those networks.”⁴⁵ Polar states that by integrating its China services with its hub at Seoul (Incheon), it will magnify the public benefits derived from the newly negotiated rights.⁴⁶ It states that because the new entrant will likely have fewer frequencies than incumbent carriers, the new entrant will need to operate a pattern of flying that meets market demand and be responsive to a broad spectrum of shippers - express and general freight. Its service from Shanghai is scheduled to cater to time-definite/express shipments with frequent service to each major U.S. gateway.⁴⁷ To this end, Polar states that at the end of the proceeding there will be four U.S. freighter operators, operating a total of 59 frequencies and that “to arm a new entrant with anything less than nine frequencies under these circumstances would competitively hobble service from the start.”⁴⁸ Polar argues that U.S. trade is severely imbalanced and maintains that its hub operations can lessen the impact of the directionality and that the sale of traffic to third countries will generate both economic and competitive support.⁴⁹ It maintains that of all of the new entrant applicants, it alone has the ability and existing infrastructure to take full advantage of the new rights and to implement services in the 2004 season.⁵⁰ Polar argues that its “service pattern will give support of multiple markets to [its] new China operation, enhance the viability of Polar’s international network overall and facilitate competition with numerous other U.S. and foreign carriers having their own Asia hubs.”⁵¹ Polar also suggests that to accommodate the startup schedule it proposes, the Department might consider granting temporary exemption authority *sua sponte* to the new designated carrier and also indicates that it has no objection to incumbent carriers also receiving temporary authority.⁵²

In response a number of the other applicants argue that Polar’s proposed service would be integrated with its existing services through its hub at Seoul, and thus the available capacity between the U.S. and China would be limited.⁵³ It is also argued that Polar’s reliance on Incheon

⁴¹ August 9 Consolidated Reply of FedEx at 19.

⁴² July 6 Answer of Polar at 4.

⁴³ July 8 Reply of Polar at 6.

⁴⁴ PO-1 at 7.

⁴⁵ August 9 Consolidated Response of Polar at 5.

⁴⁶ July 8 Reply of Polar 6.

⁴⁷ PO-1 at 4.

⁴⁸ August 9 Consolidated Response of Polar at 14.

⁴⁹ PO-1 at 3-4.

⁵⁰ July 8 Reply of Polar at 6.

⁵¹ July 6 Answer of Polar at 5.

⁵² June 28 Polar Application at 6, fn 7; August 9 Consolidated Response of Polar at 22.

⁵³ July 6 Answer of Arrow at 4; August 9 Response of Arrow at 4-5; August 2 Additional Information of Evergreen at 5; July 8 Consolidated Reply of Gemini at 5; August 9 Consolidated Reply of Gemini at 3; August 9 Reply Submission of Northwest at 18.

to offset directionality and seasonality hurts capacity that would be dedicated to U.S.-China traffic.⁵⁴ Polar is also criticized for offering service to just one city in China — Shanghai⁵⁵ - for inadequate service to the U.S. west coast,⁵⁶ and for diverting aircraft from other service.⁵⁷ Some question Polar's sustainability, citing the fact that it is a wholly owned subsidiary of Atlas.⁵⁸ The incumbents maintain that Polar should not receive 9 frequencies, with one arguing that one of its stated reasons for those frequencies is its plan to carry time-definite/express shipments and that its schedule does not support express service, and another noting that Polar itself in another proceeding stated that "only two weekly frequencies are necessary to initiate general air freight all-cargo service and that three or four frequencies are sufficient to provide a competitive general air freight service."⁵⁹

B. Incumbents

FedEx notes that it has had a long-established presence in China (since 1984); that it received authority to operate with its own aircraft in 1996; and that today it offers eleven flights a week to China with service to Shanghai, Beijing, and Shenzhen.⁶⁰ It also states that it is committed to continued growth in China, noting development of the Pearl River Delta through its facility at Shenzhen, supplemented by ground services connecting to Hong Kong flights,⁶¹ and citing its recent letter of intent to explore the possibility of establishing a hub at Guangzhou in the future.⁶² FedEx states that with the new frequencies it seeks, it will enhance the timing of deliveries in China and the capacity available to U.S. shippers, citing its proposed round-the-world proposals and its 24-hour customs clearance provided by FedEx at Shanghai as ensuring that shipments will be sent out for delivery the same day of arrival.⁶³ It also states that its proposed China service will significantly enhance the FedEx integrated network, as well as maximize the benefits to the shipping public. It maintains that the creation of the round-the-world routings will add daily round-trip transatlantic, transpacific, and intercontinental connectivity for shipments to/from China from all global markets, but particularly for U.S. exports to China.⁶⁴ In this connection, it notes that it has entered a program with the U.S. Department of Commerce to boost the export of small and medium sized packages from the U.S.⁶⁵ It also argues that these routings will offer US shippers extra lift to Europe, India, and China, and will enhance connectivity between China and shippers in the United States and throughout the world;⁶⁶ that U.S. importers seeking goods from China will have the addition of an entire flight from Shenzhen to Anchorage; and that in the westbound direction, U.S. shippers will have increased capacity with one additional dedicated aircraft for those services.⁶⁷ FedEx also states that its proposed new service to Qingdao, a major economic center in the eastern province of Shandong whose airport has been growing at an

⁵⁴ August 9 Consolidated Reply of Gemini at 4.

⁵⁵ August 9 Response of Arrow at 4; August 2 Additional Information of Evergreen at 5; August 9 Reply Submission of Northwest at 18.

⁵⁶ August 9 Consolidated Reply of Gemini at 5.

⁵⁷ August 9 Reply Submission of Northwest at 19.

⁵⁸ August 2 Additional Information of Evergreen at 7-8.

⁵⁹ August 2 Argument in Support of Application of FedEx at 18; August 9 Reply Submission of Northwest at 17-18; UPS-R-100 at 13-14.

⁶⁰ FX-T-1 at 31-32 and FX-T-2 at 11.

⁶¹ FX-T-1 at 33.

⁶² FX-T-1 at 32-33.

⁶³ FX-T-1 at 15, 23.

⁶⁴ FX-T-1 at 33.

⁶⁵ FX-T-1 at 3; FX-100 at 2; FX-121.

⁶⁶ FX-T-1 at 15; August 2 Argument in Support of Application of FX at 8.

⁶⁷ Exhibit FX-T-1 at 14-15.

average rate of 9.6%, will provide shippers and exporters with access from every address in the United States.⁶⁸ FedEx argues that the Department would “create the greatest value to the shipping public by assuring that the added frequencies are awarded to carriers that have the highest likelihood of using them effectively.”⁶⁹ Finally, FedEx expresses its concern “that the supplemental information request is inadequate to derive information with which to compare the public benefits of the proposals.”⁷⁰

Other applicants in the proceeding argue that FedEx does not need eighteen additional frequencies; that with its substantial fleet, multiple hubs and other resources, FedEx could choose alternative routings that would provide the capacity it seeks; that the FedEx request is out of line with U.S.-China demand; and that its proposed Qingdao service is to a small market.⁷¹ The new entrants criticize the FedEx position on the number of frequencies that should be allocated to the new entrant in this proceeding.⁷² UPS maintains that it will offer more new U.S.-China capacity with the 12 frequencies it seeks than FedEx will offer with the 18 frequencies it seeks.⁷³

The other express carrier in the U.S.-China market argues that its proposed services will provide more capacity in the U.S.-China market than FedEx will provide with the 18 frequencies it seeks.⁷⁴

Northwest states that its primary focus in its proposal is for the transportation of general freight, which it maintains comprises the vast majority of the U.S.-China market and is severely underserved.⁷⁵ It maintains that its proposed services will provide new capacity in all sectors of the U.S.-China air cargo market by offering a full range of transportation services, including large consolidated bulky shipments and commodities as well as small time-sensitive shipments.⁷⁶ Northwest notes that it has a strong and established Pacific cargo network, including its major hub and cross-loading facility at Anchorage and major cargo hub at Narita. With its proposed daily or near daily frequency patterns and extensive network, it states that it will provide China service to/from key U.S. markets with minimum time.⁷⁷ Northwest acknowledges that it already holds three all-cargo frequencies and states that, upon receipt of the five frequencies requested, it “will return one of the three existing frequencies to Northwest’s passenger operations to enable Northwest to increase current Detroit-Tokyo [sic] Beijing passenger service from six weekly flights to daily.”⁷⁸ Northwest maintains that its new Shanghai service will represent a gain of seven new transpacific flights, “as NWA Cargo will replace its existing Shanghai service, which operates via Tokyo Narita, with the new nonstop routing. The existing service to Tokyo will continue but will terminate at Tokyo....”⁷⁹ Its new Guangzhou service, states Northwest, will connect Anchorage with freighter flights to/from four other U.S. gateways in its system:

⁶⁸ August 2 Argument in Support of Application of FedEx at 8.

⁶⁹ FX-T-2 at 20.

⁷⁰ August 2 Argument in Support of Application of FedEx at 20.

⁷¹ August 9 Consolidated Response of Polar at 17-18; August 2 Submission of Northwest Narrative at 18-19; August 9 Reply Submission of Northwest at 11; July 6 Consolidated Answer of UPS at 5-6.

⁷² July 8 Consolidated Reply of Evergreen at 2.

⁷³ *Id.* at 3.

⁷⁴ August 9 Consolidated Reply of UPS at 6.

⁷⁵ August 9 Reply Submission of Northwest Narrative at 1; August 2 Submission of Northwest Narrative at 7.

⁷⁶ August 2 Submission of Northwest Narrative at 10-11.

⁷⁷ *Id.* at 14.

⁷⁸ *Id.* at 4 fn 6.

⁷⁹ *Id.* at 4.

Chicago, Cincinnati, Los Angeles, and New York.⁸⁰ Northwest argues that it “gives freight forwarders what they need: well-timed, full service provided with large, versatile nose-loading aircraft that carry the full range of cargo....”⁸¹ These services, it states, include small package express shipments, which “comprise eight percent of NWA Cargo’s U.S.-China traffic.”⁸² Northwest argues that receiving ten frequencies is critical to establish a “mass of all-cargo service in the U.S.-China market and to provide strong competition with FedEx and UPS and with the Chinese and other foreign-flag carriers serving the market.”⁸³

Other applicants argue that Northwest’s proposed services would be a part of and integrated with its existing Tokyo services; therefore, sharing available aircraft capacity with the US-Japan market.⁸⁴ Some carriers argue that its request for 10 frequencies is excessive considering that it already has three all-cargo frequencies and has extra cargo capacity in the form of belly capacity in its current passenger operations.⁸⁵ Northwest should not preempt frequencies from the new designated all-cargo entrant with Northwest’s ability to “double dip,” and such ability does not entitle the carrier to preferential treatment. Moreover, it is argued that if a carrier has the flexibility to use combination frequencies for cargo purposes, then such a carrier should be required to use those frequencies before it receives additional cargo-only frequencies, and it is noted that Northwest plans to shift one of its current all-cargo frequencies to its combination pool while simultaneously asking the Department to award it ten new all-cargo frequencies.⁸⁶ It is argued that Northwest’s general cargo proposal, limited to two Chinese all-cargo destinations via intermediate points would yield less value to the U.S. economy.⁸⁷ Northwest is also criticized for transporting traffic for foreign entities, namely, DHL Worldwide Express, cited as a German owned entity, with opponents arguing that Northwest’s traffic flows from Cincinnati will be generated by DHL Worldwide Express. Opponents also note that Northwest’s interest in serving Guangzhou may be driven by DHL, which has recently announced development of a large facility at Guangzhou.⁸⁸

UPS states that it will use the requested frequencies to build a cargo hub in Shanghai and that it is the only applicant proposing to use the available frequencies for such purposes. UPS argues that requested frequencies are required now for planning of the hub which will be fully operational in 2007 and that waiting until then is not realistic.⁸⁹ It also states that it is the only applicant proposing to use existing and new change-of-gauge provisions of the new agreement to enhance the value of the new six frequencies it seeks for 2004. It states that with the six frequencies it seeks for 2005 for Guangzhou service, it will serve a region that is severely underserved by air cargo transportation with first daily nonstop service.⁹⁰ It also states that, with a double-daily Shanghai service, it will effectively serve numerous Chinese markets beyond Shanghai by

⁸⁰ *Id.* at 5.

⁸¹ *Id.* at 10.

⁸² *Id.* at 11.

⁸³ *Id.* at 13.

⁸⁴ July 6 Answer of Arrow at 5.

⁸⁵ July 6 Answer of Polar at 13.

⁸⁶ July 6 Consolidated Answer of Evergreen at 5; August 9 Response of Arrow at 7; August 9 Consolidated Reply of FedEx at 16 fn 24.

⁸⁷ August 2 Argument in Support of Application of FedEx at 15.

⁸⁸ *Id.* at 16; FX-T-1 at 17-18; FedEx Consolidated Reply at 31-33; *see also* August 9 Consolidated Reply of UPS at Responsive Testimony 10 and UPS-R-100 at 13.

⁸⁹ July 6 Consolidated Answer of UPS at 2-4; August 9 Consolidated Reply of UPS at 4.

⁹⁰ July 6 Consolidated Answer of UPS at 2-4; August 2 Consolidated Response of UPS at 2.

working with its Chinese partner Yangtze River Express.⁹¹ UPS maintains that its global air network will enable it to better connect all of the world's major markets to China.⁹²

UPS' proposal is criticized as being duplicative of existing services, having U.S.-China traffic competing with U.S.-Japan traffic on its flights, and as unnecessary for providing better service.⁹³ Others also argue that the requested frequencies of UPS are not required for UPS to build a cargo hub.⁹⁴ Polar notes what it sees as irony in the UPS position regarding allocation of frequencies to the potential new entrant, contrasting the last China proceeding when UPS argued that it should be allocated sufficient frequencies to support its entry into the market to this proceeding where UPS now argues that the prospective new entrants should only be awarded no more than four weekly frequencies.⁹⁵

⁹¹ August 2 Consolidated Response of UPS at 5.

⁹² August 9 Consolidated Reply of UPS at 12.

⁹³ August 2 Submission of Northwest Narrative at 21; August 9 Reply Submission of Northwest at 14-15; NW-R-17.

⁹⁴ August 9 Reply Submission of Northwest at 16; August 9 Consolidated Reply of FedEx at 35-39.

⁹⁵ August 9 Consolidated Response of Polar at 20.